

STATE OF MAINE

CUMBERLAND ss.

SUPREME JUDICIAL COURT

DOCKET NO. BAR 98-3

BOARD OF OVERSEERS OF THE BAR )

Plaintiff )

v. )

TERRANCE J. BRENNAN, )

of Portland, Maine )

Me. Bar No. 3429 )

RESPONDENT )

DECISION AND ORDER

DEC 10 1998

This matter is before the Court pursuant to M. Bar R. 7.2(b)(1) and an Information dated July 21, 1998 filed by the Board of Overseers of the Bar (Board) against Terrance J. Brennan (Brennan) who formerly was an attorney practicing in Portland. The Information was duly served on Brennan on September 3, 1998 and on October 1, 1998 he answered it as directed by the Court in a telephone conference call with the parties on September 21, 1998. The Board was represented by Assistant Bar Counsel Geoffrey S. Welsh, Esq., and Brennan was pro se.

FINDINGS

Upon consideration of the factual allegations contained in the Board's Information, the admissions made by Brennan in his Answer thereto and the Court's telephone conference call with the parties, the Court, further hearing having been waived by both the Board and by Brennan, hereby finds the following facts.

1. On September 13, 1993 Frank D. Fournier (Fournier) filed a pro se habeas corpus motion with supporting affidavits with the United States District Court, District of Maine, (Federal Court).

2. Fournier's submissions to the Federal Court stated that he had been convicted of the crime of murder in the Cumberland County Superior Court and was then serving a fifty- (50) year sentence of incarceration at the Maine State Prison, Thomaston, Maine.

3. On March 14, 1994 Fournier retained Brennan to represent him in his Federal habeas corpus case, Brennan later receiving a \$1,000.00 fee from Fournier or his family.

4. Brennan completely neglected his representation of and legal work for Fournier, and never entered an appearance for Fournier in the Federal Court.

5. Brennan failed to keep Fournier adequately informed about the status and lack of progress of his case, and he ignored Fournier's repeated requests that Brennan contact him to discuss the matter.

6. Fournier lost his Federal habeas corpus case in both the Federal Court and in the United States Circuit Court of Appeals for the First Circuit, Fournier remaining pro se in the matter because of Brennan's failure to enter an appearance and do any work on the case after he was retained as paid counsel.

7. Fournier later requested that Brennan return and / or account to him for the \$1,000.00 fee paid Brennan, but this was never forthcoming.

8. On December 26, 1995 in the case of *Board of Overseers of the Bar v, Terrance J. Brennan*, Docket No. BAR 95-6, this Court disbarred Brennan from the practice of law in the State of Maine for reasons similar but unrelated to Fournier's case.

9. The Court's Order of December 26, 1995 also ordered Brennan to comply with Maine Bar Rule 7.3(i)(1) within 15 days of the order, therein certifying to the Court and to Bar Counsel Brennan's notification of any present clients and courts of his

disbarment, or the effective date that he earlier ceased complete practice and representation of any clients.

10. Brennan never notified Fournier of his disbarment because he believed that he no longer represented Fournier at that point.

11. On December 18, 1996 Fournier complained to the Board about Brennan.

12. On December 15, 1997 a panel of the Fee Arbitration Commission (Fee Panel) entered an Award and Determination in favor of Fournier and against Brennan, finding that Fournier is entitled to the full return of the \$1,000.00 fee paid to Brennan because of the lack of legal services provided.

13. Brennan received notice of the Fee Panel's Award to Fournier, but has not reimbursed Fournier for any of the fee previously paid to him.

14. During his representation of Fournier, Brennan had become incapacitated by the use of alcohol.

15. With respect to Brennan's conduct in this matter as described above, he has engaged in violation of M. Bar R. 3.1(a); 3.2(f), (3), (4); 3.3(a); 3.6(a)(3); 3.6(e)(2)(iv); 7.3(i)(1) and, concerning Brennan's failure to pay the Fee Award, 6(b)(6) and 9 (i).

#### SANCTION

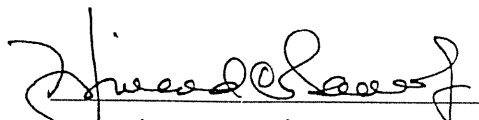
The Court disbarred Brennan on December 26, 1995 for essentially the same type of misconduct that Brennan engaged in during his representation of Fournier. As the Board acknowledged during the Court's telephone conference call of September 21, 1998, Fournier's complaints about Brennan's representation would have been considered and adjudicated by this Court along with those that formed the basis of his earlier disbarment had Fournier complained against Brennan sooner. Thus, the Court will not

sanction Brennan significantly further for his misconduct in the Fournier matter than the discipline that the Court has already imposed on him.

Based on the foregoing, it is HEREBY ORDERED that:

1. Terrance J. Brennan be and he hereby is disbarred from the practice of law in the State of Maine, said disbarment to be retroactive to December 26, 1995 and to be included in and be made a part of his earlier disbarment order in Docket No. BAR 95-6;
2. Should Brennan seek reinstatement in accordance with m. Bar R. 7.3(j), he must include within any reinstatement petition an affidavit confirming that he has remitted a full refund in the amount of \$1,000, with interest computed in accordance with 14 M.R.S.A. § 1602 since the Fee Arbitration Commission Panel's Award date of December 15, 1997, to Frank D. Fournier, Maine State prison, Box A, Thomaston, Maine 04861.
3. Except as modified herein, the provisions of the Court's Decision And Order dated December 26, 1995 in the case of *Board of Overseers of the Bar v. Terrance J. Brennan*, Docket No. BAR 95-6, remain in full force and effect.

Dated: December 7, 1998

  
Associate Justice  
Supreme Judicial Court of Maine